

HOUSE BILL 1310

B5

11r2872

By: **Delegate Conway**

Introduced and read first time: March 2, 2011

Assigned to: Rules and Executive Nominations

Re-referred to: Appropriations, March 7, 2011

Committee Report: Favorable

House action: Adopted

Read second time: March 22, 2011

CHAPTER _____

1 AN ACT concerning

2 **Tax Supported Debt – Energy Performance Contracts**

3 FOR the purpose of providing that tax supported debt does not include certain capital
4 leases used to finance energy performance contracts; excluding certain capital
5 leases from the requirement that the Treasurer capitalize certain capital lease
6 payments; restating the authority of the Treasurer to finance certain energy
7 performance contracts as capital leases; requiring that certain capital lease
8 payments or certain contractor payments may not exceed certain energy
9 savings; and generally relating to capital leases used to finance energy
10 performance contracts.

11 BY repealing and reenacting, with amendments,
12 Article – State Finance and Procurement
13 Section 8–104, 8–405, and 12–301
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2010 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – State Finance and Procurement**

19 8–104.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) In this Part II of this subtitle the following words have the meanings
2 indicated.

3 (b) "Committee" means the Capital Debt Affordability Committee.

4 (c) (1) "Tax supported debt" means:

5 (i) State debt; and

6 (ii) other forms of debt, including State agency capital leases
7 supported in whole or part by State tax revenues and debt of the Department of
8 Transportation, the Maryland Stadium Authority, and other units of State
9 government which, in the opinion of the Committee, are supported directly or
10 indirectly by State tax revenues.

11 (2) "Tax supported debt" includes debt issued by the Department of
12 Transportation under Title 3, Subtitle 6 of the Transportation Article or by the
13 Maryland Transportation Authority under Title 4, Subtitle 3 of the Transportation
14 Article that is secured by a pledge of future federal aid from any source.

15 **(3) "TAX SUPPORTED DEBT" DOES NOT INCLUDE CAPITAL LEASES**
16 **USED TO FINANCE ENERGY PERFORMANCE CONTRACTS ENTERED INTO UNDER §**
17 **12-301 OF THIS ARTICLE, IF, AS DETERMINED BY THE COMMITTEE, ENERGY**
18 **SAVINGS THAT ARE GUARANTEED BY THE CONTRACTOR:**

19 **(I) EQUAL OR EXCEED THE CAPITAL LEASE PAYMENTS ON**
20 **AN ANNUAL BASIS; AND**

21 **(II) ARE MONITORED IN ACCORDANCE WITH REPORTING**
22 **REQUIREMENTS ADOPTED BY THE COMMITTEE.**

23 8-405.

24 (a) **[The] EXCEPT FOR CAPITAL LEASES USED TO FINANCE ENERGY**
25 **PERFORMANCE CONTRACTS EXCLUDED FROM TAX SUPPORTED DEBT UNDER §**
26 **8-104 OF THIS TITLE, THE** Treasurer shall, at a reasonable market rate, capitalize
27 the payments on a capital lease authorized under this subtitle on an annual basis for
28 each fiscal year the lease is in effect.

29 (b) The greater of the amount determined for a given fiscal year under
30 subsection (a) of this section or the amount of any purchase value at the termination of
31 a capital lease authorized under this subtitle shall be included in the tax supported
32 debt considered by the Capital Debt Affordability Committee in its annual estimate for
33 that fiscal year under Subtitle 1 of this title.

34 12-301.

1 (a) (1) Before issuing a request for proposals for an energy performance
2 contract, a primary procurement unit shall consult with the Maryland Energy
3 Administration.

4 (2) The Maryland Energy Administration shall review the proposed
5 request to ensure that it meets with the State energy standards, preserves the State's
6 flexibility to investigate and use economically justifiable new technologies, and is in
7 conformance with the unit's energy conservation plan that has been developed in
8 accordance with § 4-806 of this article.

9 (b) (1) Notwithstanding any other provision of law and subject to the
10 approval and control of the Board of Public Works, a primary procurement unit of
11 State government is authorized to enter into energy performance contracts of up to 15
12 years duration.

13 (2) **THE TREASURER MAY ENTER INTO A CAPITAL LEASE TO**
14 **FINANCE ENERGY PERFORMANCE CONTRACTS AS PROVIDED IN TITLE 8,**
15 **SUBTITLE 4 OF THIS ARTICLE.**

16 (3) The payments and the total contract amount due under an energy
17 performance contract **OR, IN THE CASE OF A CAPITAL LEASE USED TO FINANCE**
18 **ENERGY PERFORMANCE CONTRACTS, THE CAPITAL LEASE PAYMENTS,** may not
19 exceed the actual energy savings realized as a result of the contract's performance.

20 **[(3)](4)** (i) Before approval of an energy performance contract,
21 the Board:

22 1. shall ensure that the projected annual energy savings
23 attributable to the project will exceed the projected annual **CAPITAL LEASE**
24 **PAYMENTS OR** payments to the contractor under the contract; and

25 2. based on the review of the Maryland Energy
26 Administration, shall determine whether the proposed energy technology is
27 appropriate for the time period provided in the contract.

28 (ii) The Board may:

29 1. authorize the use of incentive contracts, including
30 contracts that guarantee energy savings performance; and

31 2. require prospective contractors to furnish appropriate
32 guarantees to ensure that projected savings are realized.

33 (iii) Any guarantees required under subparagraph (ii) of this
34 paragraph may include a requirement that the contractor furnish a bond or other

1 assurance to the State in an appropriate amount to guarantee projected performance
2 and that the bond or other assurance be structured so that a failure to meet
3 guaranteed performance savings will forfeit a portion of the bond or other assurance to
4 match the shortfall in energy savings.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 June 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.